

Decision 03-03-026 March 13, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AT&T Communications of California, Inc.,

Complainant,

vs.

Pacific Bell Telephone Company,

Defendant

Case 99-12-029
(Filed December 21, 1999)

Pacific Bell Telephone Company,

Complainant,

vs.

AT&T Communications of California, Inc.

Defendant.

Case 00-02-027
(Filed February 6, 2000)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

I. Summary of Award

This decision denies Greenlining Institute and Latino Issues Forum (collectively Greenlining) an award of compensation for participation in this proceeding because they did not satisfy the statutory requirement that they make a substantial contribution.

II. Background

These consolidated complaints arose out of billing disputes between AT&T Communications of California, Inc. (AT&T) and Pacific Bell (Pacific). AT&T alleged that Pacific had slammed thousands of California customers who had pre-subscribed AT&T or another carrier as their Local Primary Interexchange Carrier (LPIC), and that Pacific engaged in unfair business and billing practices to win back customers who had switched their LPIC from Pacific to AT&T. Pacific alleged that AT&T had engaged in slamming activities.

On August 7, 2000, AT&T and Pacific filed requests to dismiss their complaints without prejudice. These requests were denied because neither party provided sufficient evidence on what impact their slamming allegations may have had on the public, as explained in interim Decision (D.) 01-02-017, dated February 8, 2001. By that same decision, the Director of Consumer Protection and Safety Division (CPSD) was requested to investigate the slamming allegations and to file a report on the results of its investigation.¹ CPSD filed its report on August 7, 2001.

D.02-10-006, dated October 3, 2002, was issued in response to our review of the CPSD report. That decision required Pacific to retain an independent auditor to conduct an “operational audit”² and validation³ of Pacific’s current process for

¹ At the time D.01-02-017 was issued CPSD was known as the Consumer Services Division.

² As used here, “operational audit” is an evaluation of the effectiveness and efficiency of an entity’s compliance with regulatory policies, plans, procedures, laws, and regulations.

³ Validation encompasses a statistical sampling of direct confirmation with LPC customers.

tracking and billing LPIC disputes. That decision also closed the proceeding. This proceeding was resolved without an evidentiary hearing.

III. Requirements for Award of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to §§ 1801-1812.⁴ Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within prescribed timeframes. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request.⁵ The NOI may also request a finding of eligibility.

Section 1803 provides for the award of fees to customers who make a substantial contribution and whose participation without compensation would impose a significant financial hardship. To be eligible for compensation, an intervenor must be a customer as defined by Section 1802(b).

Other code sections address the filing of requests for compensation. Under § 1804(c), an intervenor requesting compensation must provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

⁴ All statutory references are to the Public Utilities Code unless otherwise stated.

⁵ To be eligible for compensation, an intervenor must be a customer as defined by § 1802(b). In D.98-04-059 (footnote 14), we affirmed our previously articulated interpretation that compensation be proffered only to customers whose participation arises directly from their interest as customers. (See D.88-12-034, D.92-04-051, and D.96-09-040.) Today's decision, like the statute, uses "customer" and "intervenor" interchangeably.

“in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable expert fees, and other reasonable cost incurred by the customer in preparing or presenting that contention or recommendation.”

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

IV. Notice of Intent to Claim Compensation

On September 12, 2000, Greenlining filed a motion and petition to intervene in this proceeding. That request was granted in D.01-02-017. On March 12, 2001, Greenlining filed its NOI and on June 14, 2001 the assigned Administrative Law Judge (ALJ) ruled that the NOI was deemed timely and qualified Greenlining as a Category III customer.⁶ That same ruling invited

⁶ A Category III customer is a representative of a group or organization formally organized with articles of incorporation or bylaws that authorize the entity to represent the views of residential customers, members of which includes residential ratepayers of the applicant. (See § 1802(b).)

Greenlining to demonstrate its significant financial hardship as part of any compensation request it may file.

V. Request for Award of Compensation

Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. Greenlining timely filed a \$19,004 compensation request on December 2, 2002. As part of that request, Greenlining demonstrated that its rebuttal presumption of eligibility for compensation in D.02-09-003 continues to exist for this proceeding.

VI. Substantial Contribution to Resolution of Issues

A party may make a substantial contribution to a decision in one of several ways, as described in Section 1802(h). It may offer a factual or legal contention upon which the Commission relied in making a decision or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.⁷

A. Greenlining

Greenlining contends that it substantially contributed to D.02-10-006 because it "raised the point that each utility was likely to have more evidence on

⁷ The Commission has provided compensation even when the position advanced by the intervenor was rejected. See D.89-03-063 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in the Diablo canyon Rate case because their arguments, while ultimately unsuccessful, required the utility to document thoroughly the safety issues involved).

the slamming activities of the other than any consumer group or governmental agency.”⁸ It also took the position that the Commission has a responsibility to investigate these allegations regardless of how the utilities wanted to proceed.

For example, in its reply to the utilities’ intervention opposition, Greenlining argued why its motion and petition should be granted and argued why the utilities’ complaints should not be dismissed. It also cited comments made by the assigned ALJ who stated that he shared some of these concerns at the September 6, 2000 PHC. (PHC TR 54, line 28 through TR 55 at 4.) In addition, Greenlining sent September 11, 2002 letters to the assigned Commissioner and ALJ supporting the draft decision that became the final decision in this proceeding.

Greenlining concludes that its positions are fully supported in the decisions and that the final decision fully embraces its position to investigate slamming allegations. Greenlining valued the ratepayer benefit of its productivity in this proceeding to be at least \$22 million, as detailed in its compensation request.

B. Pacific’s Opposition

Pacific timely filed its opposition. Pacific disputes the Greenlining claim that its comments on evidence the utilities likely have and Commission responsibility to investigate slamming allegations substantially contributed to this proceeding. Pacific notes that the Commission specifically stated in the interim decision that Greenlining comments were not relied upon and that

⁸ Compensation request at page 4.

Greenlining had no formal standing until the interim decision was issued.⁹ In addition, Greenlining chose not to avail itself of the opportunity to raise its concerns at a later date by way of motion, as provided by that interim decision.

Although Greenlining sent letters to the assigned Commissioner and ALJ supporting the draft decision adopted as a final decision, Pacific disputes the contention of Greenlining that the letters contributed to the final decision because Greenlining never advocated or suggested that Pacific's current process for tracking and billing LPIC disputes should be audited prior to issuance of the draft decision.

Pacific concludes from its above stated positions that Greenlining is not entitled to any compensation because the Commission did not adopt any specific recommendation advocated by Greenlining.

C. AT&T's Opposition

On January 6, 2003, AT&T filed a motion to accept its late-filed reply.¹⁰ Attached to that motion was its opposition to the compensation request. AT&T explains that it was not able to timely file concurrent support for Pacific's response because of holiday absences and illness of its counsel.

AT&T, by joining with and adopting Pacific's opposition is not adding any new arguments to those put forth by Pacific on a timely basis. Hence, acceptance of AT&T's late-filed opposition will not cause any prejudice to Greenlining. AT&T's motion to accept its late-filed opposition is granted.

⁹ D.01-02-017, mimeo. at p. 7 (2001).

¹⁰ A timely filed opposition was due January 2, 2003, 15 days after the filing of the compensation request.

D. Reply to Pacific's Opposition

Greenlining timely replied to Pacific's opposition, but did not address any of the concerns raised by Pacific about a lack of substantial contribution.

E. Discussion

Two decisions were issued in this proceeding, interim D.01-02-017 and final D.02-10-006. Although Greenlining was granted intervenor status by the interim decision, none of the Greenlining comments prior to the issuance of that decision support its substantial contribution claim. In fact, D.01-02-017 specifically stated that Greenlining comments were not relied upon in issuing the interim decision. Hence, time spent to D.01-02-017, for example, comments of Greenlining at the PHC and in its motion and petition to intervene, did not result in a substantial contribution and cannot be compensated.

The interim decision provided Greenlining with the opportunity to follow through on its concerns by way of motion at a later date. That decision also established a process for Greenlining to conduct discovery and to comment on the CPSD report on issues identified in the Assigned Commissioner's April 20, 2000 Scoping Memo and CPSD's recommendation on whether the complaints should be dismissed. However, the only activity undertaken by Greenlining subsequent to the interim decision was discovery and its issuance of letters to the assigned Commissioner and ALJ supporting the final draft decision.¹¹

¹¹ We note that at page 7 of the Greenlining Request for Compensation, it lists discovery as one of the activities engaged in. However, the time sheets for Greenlining's advocates do not list any discovery after D.01-02-017 was issued.

None of the actions taken by Greenlining demonstrate that it substantially assisted the Commission in issuing a decision that adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations, as required by Section 1802(h). Greenlining has not satisfied the statutory requirement that it make a substantial contribution to receive intervenor compensation. Its compensation request must be denied.

VI. Waiver of Comment Period

This is a compensation matter pursuant to Section 1801-1812. Accordingly, pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is being waived.

VII. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Michael J. Galvin is the assigned ALJ in this proceeding.

Findings of Fact

1. Greenlining timely filed its intervenor compensation request.
2. A rebuttal presumption of significant financial hardship exists for Greenlining.
3. This proceeding was resolved without an evidentiary hearing.
4. CPSD filed a report and recommendation on the alleged slamming complaints pursuant to the interim decision.
5. The interim decision did not rely on Greenlining comments.
6. Greenlining had no formal standing until the interim decision was issued.
7. The interim decision permitted Greenlining to raise its concerns by way of a subsequent motion.

8. AT&T filed a motion to accept its late-filed reply to the compensation request of Greenlining.

9. Subsequent to the interim decision, Greenlining conducted discovery and sent letters to the assigned Commissioner and ALJ supporting the final draft decision.

10. Section 1802(h) sets forth the substantial contribution criteria for awarding compensation.

11. The appendix to the opinion summarizes today's denial of an award.

Conclusions of Law

1. AT&T's motion to accept its late-filed reply to the compensation request of Greenlining should be granted because it is not adding any new arguments to those put forth by Pacific on a timely basis and will not cause any prejudice to Greenlining.

2. Greenlining has not substantiated that it substantially contributed to this proceeding, as required by Section 1802(h).

3. Greenlining should not be awarded any compensation for its participation to this proceeding.

4. The public review and comment period for this compensation decision should be waived, pursuant to Pub. Util. Code § 311(g)(3) and Rule 77.7(f) (6).

5. This order should be effective today so that this consolidated proceeding may be closed without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. AT&T Communications of California, Inc.'s motion to accept its late-filed reply comments to the Greenlining Institute and Latino Issue Forum's (collectively Greenlining) compensation request is granted.

2. The \$19,004 intervenor compensation request of Greenlining for its participation in this proceeding is denied.

3. The comment period for today's decision is waived.

4. Case (C.) 99-12-029 and C.00-02-027 are closed.

This order is effective today.

Dated March 13, 2003, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners

Compensation Decision Summary Information

Compensation Decision(s):	D03-03-026
Contribution Decision(s):	D0210006
Proceeding(s):	C9912029/C0002027
Author:	ALJ Galvin
Payer(s):	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/Disallowance
Greenlining Institute/Latino Issues Forum	12/02/02	\$19,004	\$0	Failure to make substantial contribution.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
None adopted						